

U.S. Department of Justice

Washington, DC 20530

**Exhibit B to Registration Statement****Pursuant to the Foreign Agents Registration Act of 1938, as amended**

**INSTRUCTIONS.** A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at <http://www.fara.gov> or an original form for each foreign principal named in the registration statement and must be signed by or on behalf of the registrant.

**Privacy Act Statement.** The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <http://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <http://www.fara.gov>.

**Public Reporting Burden.** Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant	2. Registration No.
APCO Worldwide Inc.	4561

3. Name of Foreign Principal

Government of Malaysia

Check Appropriate Box:

4. ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.
5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.
6. ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.
7. Describe fully the nature and method of performance of the above indicated agreement or understanding.

The Registrant will provide public affairs and government affairs services within the U.S. to the foreign principal for the purpose of promoting positive U.S./Malaysia relations.

8. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

The Registrant will provide public affairs and government relations consulting services within the U.S. to the foreign principal and will carry out activities to promote positive U.S./Malaysia relations.

9. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act and in the footnote below? Yes ☒ No ☐

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

The Registrant will assist the foreign principal within the U.S. in building on positive U.S. Malaysia relations.

#### EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit B to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit B	Name and Title	Signature
December 19, 2011	Terry W. Judd, Vice President	/s/ Terry W. Judd eSigned

Footnote: Political activity as defined in Section 1(o) of the Act means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF MALAYSIA**

**AND**

**APCO WORLDWIDE INC.**

**ON**

**STRATEGIC COMMUNICATIONS, PUBLIC RELATIONS  
AND PRESS OUTREACH**

**THE 15<sup>TH</sup> DAY OF NOVEMBER 2011**

THIS AGREEMENT is made the 15<sup>th</sup> day of NOVEMBER 2011.

**BETWEEN**

**GOVERNMENT OF MALAYSIA**, for the purpose of this Agreement is represented by the Prime Minister's Department, having its address at Level 2, Block B8, Prime Minister's Department Complex, Federal Government Administrative Centre, 62502 Putrajaya, Malaysia ("the Government") of the one part;

**AND**

**APCO Worldwide Inc.**, a corporation formed under the laws of the State of Delaware, United States of America ("USA") and having its address at 700 12<sup>th</sup> Street, NW, Suite 800, Washington, DC, 20005, USA ("APCO") of the other part,

(the Government and APCO shall hereinafter be referred to individually as "the Party" and collectively as "the Parties").

**WHEREAS –**

- (A) The Government has agreed to appoint APCO to provide strategic communications, public relations, daily management and international press outreach for the Government in the United States ("the Services");

Tertekucull daripada Duti Setem  
Oleh Pengecualan Am Sek 35  
Akta Setem 1949

Dr (261) 29/11/2011

Timh. Pamungut Duti Setem, Hulu Langat.  
LHDN/W.01/34/4253.....

- (B) APCO has agreed to the appointment to undertake the Services and has submitted the terms of reference and scope of work for the implementation of the Services; and
- (C) The Parties have agreed that APCO shall provide the Services in accordance with the terms and conditions set forth in this Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**CLAUSE 1**

**DURATION OF CONTRACT**

**1.1 Contract Period**

1.1.1 This Agreement shall be in force for a period of one (1) year commencing from January 1, 2011 and ending on December 31, 2011 ("the Contract Period").

1.1.2 This Agreement shall be deemed to be effective from January 1, 2011 ("the Effective Date").

**1.2 Extension of Contract Period**

1.2.1 APCO may apply to extend the Contract Period by notifying the Government in writing at least two (2) months prior to the expiry of the Contract Period.

1.2.2 If the Government agrees to extend the Contract Period, the Parties may as soon as reasonably practicable after the receipt of such notification by the Government, negotiate the terms and conditions of such extension. In the event the Parties fail to reach an agreement, this Agreement shall automatically expire on the expiry of the Contract Period.

**CLAUSE 2**

**STRATEGIC COMMUNICATIONS, PUBLIC RELATIONS AND PRESS  
OUTREACH**

2.1 APCO shall provide the Services as described in **Annex A**. Changes in the scope of work set forth in **Annex A** may be agreed by the Parties from time to time through the execution of written change orders, signed by authorized signatories of both Parties and stating additional payments required to complete the change order.

2.2 The Services provided by APCO under this Agreement and all payments received by APCO hereunder shall be reported by APCO to the US Department of Justice in accordance with the Foreign Agents Registration Act of 1938 ("FARA").

**CLAUSE 3**

**DELIVERABLES**

3.1 The deliverables for the Services are as listed in **Annex B** ("the Deliverables").

3.2 The Government may, at any time after consultation with APCO, change the Deliverables so long as:

- (a) any changes to the Deliverables are within the scope of work and are of the type and nature of professional services offered by APCO, and
- (b) any changes to the Deliverables requiring additional work are offset by agreed deletion from APCO's obligations of other Deliverables, with

the result that the total amount of labor and expenses required of APCO does not change.

3.3 APCO shall carry out the Services in accordance with a timeline, to be agreed with the Government for the delivery of the Deliverables.

3.4 APCO may apply to extend the timeline by notifying the Government in writing at least two (2) weeks prior to expiry of the timeline.

3.5 If the Government agrees to extend the timeline, the Parties may as soon as reasonably practicable after the receipt of such notification, negotiate on a new timeline for Deliverables of the Services. If an agreement cannot be reached, the existing timeline shall apply.

3.6 APCO, on the closing week of each quarter, shall provide to the Government a written certification of all Deliverables as outlined in **Annex B** of this Agreement.

3.7 All Deliverables and certification to be prepared and submitted under this Agreement shall be in the English language unless directed otherwise by the Government.

3.8 If APCO fails to deliver the Deliverables in accordance with the timeline for the delivery of the Deliverable or such other extended period as may be agreed upon by the Government, APCO shall pay the Government liquidated ascertained damages (LAD) to be calculated in accordance with the formula set out in Clause 3.9 for each month of delay until the delivery of the respective Deliverables.

3.9 The calculation of the LAD shall be as in accordance with the following formula:

Contract Price x 0.5% / per month = Amount of LAD per month of delay

3.10 The Government may deduct such amount from the amount payable to APCO under this Agreement PROVIDED the LAD payable under this Agreement shall not exceed the Contract Price.

#### **CLAUSE 4**

#### **MONITORING**

4.1 APCO shall work with the Government to co-ordinate the execution of the Services under this Agreement.

4.2 Any monitoring required or permitted to be taken under this Agreement, including and with regard to the Deliverables as per Annex B shall be taken or executed on behalf of the Government by the duly authorised representative from the Malaysian Embassy in Washington, USA.

#### **CLAUSE 5**

#### **FEES, EXPENSES AND PAYMENT TERMS**

5.1 In consideration of APCO performing the Services in accordance with the provisions of this Agreement and subject to APCO fulfilling the terms and conditions of this Agreement to the satisfaction of the Government, the Government shall pay APCO fees not exceeding **USD Six Hundred Thousand (USD600,000.00)** only ("the Contract Price").

5.2 Fees charged shall be exclusive of all expenses incurred by APCO in performing the Services under this Agreement. The Government shall reimburse



APCO for all actual, reasonable out-of-pocket expenses incurred in APCO's performance of this Agreement, including, without limitation, hotel charges and business class airfare for all international travel incurred by APCO and/or its consultants engaged by APCO in connection with this Agreement, fees of subject matter experts and other consultants engaged by APCO in connection with this Agreement, and all routine costs and overhead charges incurred by APCO in performing the Services and including any VAT levied by the Malaysian Government or body. The Government shall make an advance payment of USD Sixty Thousand (USD60,000.00) only to APCO within seven (7) banking days of signing this Agreement, such amount to be applied by APCO to expenses incurred during the first three (3) months of the Agreement calculated from the Effective Date. Commencing in April 2011 (for expenses incurred through March 2011), APCO shall submit monthly invoices to the Government for reimbursement after such expenses have been incurred. The Government shall reimburse such expenses within thirty (30) days after APCO's invoices. Expenses shall be capped to a maximum of USD One Hundred and Twenty Thousand (USD120,000.00); in the event that the extension comes into effect as set forth in Clause 1.2.1, expenses during the extension period shall be capped to a maximum of USD One Hundred and Twenty Thousand (USD120,000.00) for a maximum of USD Two Hundred and Twenty Four Thousand (USD240,000.00) for total expenses over the periods covered by Clauses 4.1 and 1.2.1.

5.3 The Government shall, subject to APCO carrying out its obligations under the Agreement, pay the fees described in Clause 5.1 as follows:

- (a) 50% within seven (7) banking days of the signing date of this Agreement: USD Three Hundred Thousand (USD300,000.00) ("First Instalment"); and
- (b) 50% payment: USD Three Hundred Thousand (USD300,000.00) ("Second Instalment")

Upon receipt of invoice being issued by the government representative mentioned in Clause 5.2.

5.4 Payments shall be made by bank transfer to -

Citibank FSB  
1400 New York Ave., NW  
Washington, DC 20005  
USA  
Account No.: [REDACTED]  
ABA No. [REDACTED]  
Swift Code: [REDACTED]

5.5 Notwithstanding the right of the Government to terminate this Agreement, if any of the following events shall have happened and be continuing, the Government may, by a written notice to APCO whichever is the case, withhold in whole or in part, payments due to APCO under this Agreement:

- (a) a default shall have occurred in the execution of any of the terms of this Agreement on the part of APCO;
- (b) reports and/or certification were not submitted in accordance with the specified schedule and/ or the Government is not satisfied with the Deliverables submitted; or
- (c) any other condition, which has arisen, which in the reasonable opinion of the Government, interferes or threatens to interfere with the successful carrying out of the Services or the accomplishment of the purposes of this Agreement.

5.6 The Government shall release any payments withheld under Clause 5.5 to APCO accordingly when APCO has taken all the necessary steps to rectify the default for which the payment was withheld to the reasonable satisfaction of the Government.

**CLAUSE 6**  
**STANDARD OF CARE AND SKILL**

APCO shall perform their obligations under this Agreement –

- (a) by exercising the requisite skill and in a proper manner with due diligence and efficiency;
- (b) in conformity with sound professional practice, administrative and financial practices;
- (c) in such a manner as shall always safeguard and protect the Government's interests and with all necessary and proper steps taken to prevent abuse or uneconomical or inefficient use of facilities or resources made available to APCO;
- (d) in such a manner as not to infringe any intellectual property rights of any party; and
- (e) in accordance with the provisions of this Agreement.

**CLAUSE 7**  
**REPRESENTATIONS AND WARRANTIES**

APCO represents and warrants to the Government that -

- (a) it is a corporation validly registered or established under the laws of the State of Delaware, USA;
- (b) it has the legal capacity to enter into and perform its obligations under this Agreement and to carry out the transactions and to carry on its business as contemplated by this Agreement;
- (c) it has taken all necessary actions to authorize the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement;
- (d) as at the execution date of this Agreement, neither the execution nor performance by it of this Agreement nor any transactions contemplated by this Agreement shall violate in any respect any provision of -
  - (i) its Memorandum and Articles of Association; or
  - (ii) any other document or agreement, which is binding upon it or its assets;
- (e) no litigation, arbitration, tax claim, dispute or administrative proceeding is presently current or pending or, to its knowledge, threatened, which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under this Agreement;
- (f) this Agreement constitutes a legal, valid and binding obligation of APCO and is enforceable in accordance with its terms and conditions;
- (g) the Services shall be performed in a first class manner in conformity with the standards generally observed in the industry for similar services;

- (h) it has necessary financial and technical capabilities to undertake the Services under this Agreement;
- (i) the execution of this Agreement and the performance of its obligations under this Agreement will not cause a breach by APCO of any duty arising in law or equity;
- (j) to the best of APCO's knowledge and belief, the Services shall not contain defamatory, obscene, racially inflammatory or blasphemous matter of any kind; and
- (k) with the exception of any material provided by the Government to APCO, the Services will be wholly original to APCO and/or its consultants, agents or affiliates;

and APCO acknowledges that the Government has entered into this Agreement in reliance on its representations and warranties as aforesaid.

## CLAUSE 8

### INTELLECTUAL PROPERTY RIGHTS

8.1 All Government documents and materials used in the course of the Services shall be the absolute property of the Government. Any of the documents designated as "confidential" shall be treated as confidential by APCO.

8.2 All reports, certification and materials produced by APCO pursuant to this Agreement and the proprietary rights in those reports, certification and materials shall belong to the Government except for those materials belonging to APCO and which was used by APCO in the performance of the Services.

8.3 APCO may retain a copy of the reports, certification or materials used and produced under this Agreement for its own record but shall not use the same for purposes unrelated to this Agreement without the prior written approval of the Government.

8.4 The obligations stipulated in this Clause shall survive the expiration or termination of this Agreement.

#### **CLAUSE 9**

##### **INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

9.1 In the event of any action, claim or demand against the Government for any infringement of an intellectual property right caused by the use of any material produced by APCO pursuant to this Agreement, the Government shall inform APCO of such claim without delay.

9.2 APCO shall indemnify the Government in respect of any liability arising thereof and shall bear all expenses relating to the said action, claim or demand, provided always that the Government shall make no admissions in relation thereto, gives APCO control of the action and/or proceedings and settlement thereof at APCO's convenience, and provides all reasonable assistance to APCO as APCO may request.

9.3 The obligations stipulated in this Clause should survive the expiration or termination of this Agreement.

**CLAUSE 10**

**INDEMNITY**

10.1 Except as otherwise expressly provided in this Agreement, APCO shall perform all of its obligations under this Agreement at its own risk and releases to the fullest extent permitted by law, the Government and its agents and servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising solely from APCO's negligence or willful misconduct in the carrying out of the Services and the Government shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.

10.2 APCO shall indemnify and keep indemnifying the Government from and against all action, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Government shall become liable in respect of or arising from -

(a) any negligent action or omission by APCO or by the personnel, servants, agents or employees of APCO in connection with this Agreement; or

(b) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained by any person to the extent caused or contributed to by carrying out the Services by APCO other than by the negligence or willful act, default or omission of the Government, its agents or servants.

10.3 The Government shall indemnify APCO from and against all action, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charge and expenses whatsoever to which APCO becomes liable in respect of or arising from any negligent action or omission by the Government or by the personnel, servants, agents or employees of the Government in connection with this Agreement.

10.4 The obligations under this Clause shall continue after the expiry or earlier termination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or termination of this Agreement.

## **CLAUSE 11**

### **TERMINATION**

#### **11.1 Termination by the Government**

##### **11.1.1 Default by APCO**

In the event APCO without reasonable cause -

- (a) suspends the Services and fails to proceed regularly and diligently with the performance of its obligations under this Agreement;
- (b) fails to execute the Services respectively in accordance with this Agreement or persistently neglects to carry out its obligations under this Agreement;
- (c) defaults in performing the duties under this Agreement; or
- (d) breaches any of its obligations or fails to comply with any other terms and conditions of this Agreement,

then the Government shall give notice in writing to APCO specifying the default and requiring APCO to remedy such default within thirty (30) days after the date of the notice.



In the event APCO fails to remedy and the default continues, the Government shall have the right to terminate the Services under this Agreement at any time thereafter by giving notice to that effect.

#### **11.1.2 General Default**

If at any time during the Contract Period -

- (a) an order or judgment by a court of competent jurisdiction is obtained against APCO;
- (b) a winding-up proceeding is instituted against APCO;
- (c) a winding-up order is made against APCO;
- (d) APCO makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts; or
- (e) execution is levied against a substantial portion of APCO's assets, unless it has instituted proceedings in good faith to set aside such execution,

the Government shall have the right to terminate this Agreement forthwith by giving notice to that effect. The termination shall be effective upon the expiry of the period specified in the termination notice.

#### **11.1.3 Consequences of Termination**

Upon the termination of the Services by the Government -

- (a) the rights granted in this Agreement shall terminate immediately;
- (b) APCO shall be entitled to the payment of so much of the Services that has been completed and approved and expenses incurred, in accordance with APCO's payment schedule as set out in Clause 4, up to the termination date;
- (c) APCO shall –
  - (i) forthwith cease all the Services;
  - (ii) submit to the Government the detailed reports of the cost of the Services and other payments which has become due and owing from the Government prior to the termination for verification and approval by the Government;
  - (iii) terminate all third party agreements entered into by APCO in respect of the carrying out of the Services;
  - (iv) hand over all Government documents, records or other materials compiled for the provision of the Services and, subject to APCO's receipt of amounts due and payable from the Government, deliver all reports, manual, guideline and other materials produced by APCO;
  - (v) submit all claims for payments of any expenditure incurred in accordance with this Agreement, which have been incurred prior to the date of termination which have not previously been reimbursed.
- (d) the Government shall-

- (i) claim against APCO for any losses and damages suffered as a result of the termination of this Agreement; and
- (ii) be entitled to appoint another consultant to perform the Services and APCO shall pay to the Government all costs and expenses incurred by the Government in completing the Services in excess of the costs and expenses which would have been paid to APCO to complete such Services had this Agreement not been terminated.

Provided that the termination shall not affect or prejudice the rights of any Party which have accrued prior to the date of termination of this Agreement and the obligations under this Agreement shall continue even after the termination of this Agreement in respect of any act, deed, matter or thing happening prior to such termination of this Agreement.

## **11.2 Termination by APCO**

### **11.2.1 Default by the Government**

If the Government without reasonable cause fails to perform or fulfill any of its obligations which adversely affects APCO's obligations under this Agreement, APCO may give notice in writing to the Government specifying the default and the Government shall remedy the relevant default within thirty (30) days after receipt of such notice or such other extended period as agreed by the Parties. If the Government fails to remedy the relevant default within such period or such other extended period, APCO shall be entitled to terminate this Agreement at any time by giving notice to that effect.

### 11.2.2 Consequences of Termination by APCO

Upon the termination of the Services by APCO, APCO shall—

- (a) accept the undertaking by the Government to pay APCO all monies due and payable to APCO as at the date of the termination of this Agreement which have not been paid, as full and complete settlement of all claims arising out of this Agreement;
- (b) subject to APCO's receipt of all outstanding amounts, hand over the Deliverables, equipment and all other documents, materials and equipment related to the Services, to the Government; and
- (c) cease all works on the Services.

### 11.3 Termination on National Interest

11.3.1 Notwithstanding any provision of this Agreement, the Government may terminate this Agreement by giving not less than thirty (30) days notice to that effect to APCO (without any obligation to give any reason thereof) if it considers that such termination is necessary for national interest, in the interest of national security or for the purpose of Government policy or public policy.

11.3.2 For the purpose of this Clause, what constitutes "national interest", "interest of national security", "Government policy" and "public policy" shall be solely made and determined by the Government and such determination shall for all intent and purpose be final and conclusive and shall not be open to any challenge whatsoever.

11.3.3 Upon termination of the Services under Clause 11.3.1, APCO shall be entitled to the payment of so much of the work that has been completed and

approved and expenses incurred in accordance with APCO's payment schedule as set out in Clause 4 up to the termination date.

#### **11.4 Termination on Corruption, Unlawful or Illegal Activities**

- (a) Without prejudice to any other rights of the Government, if the Government determines in its reasonable, good faith discretion that APCO, its personnel, servants, agents or employees is or are engaged in corruption or unlawful activities in relation to this Agreement or any other agreements that APCO may have with the Government, the Government shall be entitled to terminate this Agreement at any time by giving immediate written notice to that effect to APCO.
- (b) Upon such termination, the Government shall be entitled to all losses, costs, damages and expenses (including any incidental costs and expenses) incurred by the Government arising from such termination.

#### **CLAUSE 12**

##### **SUSPENSION**

The Government reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Agreement which suspension shall take effect immediately after written notification has been given to APCO.

#### **CLAUSE 13**

## FORCE MAJEURE

### **13.1 Events of *Force Majeure***

Neither Party shall be in breach of its obligations under this Agreement if it is unable to perform its obligation under this Agreement or any part of them as a result of the occurrence of an Event of *Force Majeure*. An "Event of *Force Majeure*" shall mean an event, not within the control of the Party affected, which the Party affected, is unable to prevent, avoid or remove and shall include –

- (i) war (whether declared or not), hostilities, invasion, armed conflict, act of foreign enemy, rebellion, insurrection, civil war, revolution or usurped power;
- (ii) acts of terrorism, sabotage or criminal damage;
- (iii) nuclear explosion, radioactive or chemical contamination or radiation;
- (iv) natural catastrophes including but not limited to epidemics, earthquakes, floods, subsidence and exceptionally inclement weather and subterranean spontaneous combustion;
- (v) prohibitions and restrictions on travel imposed or recommended by national or international health authorities that affect the key personnel required to provide the Services; and
- (vi) riots, labour or other industrial disturbances affecting the performance of this Agreement and which are not the faults of the Parties.

### **13.2 Reliance on *Force Majeure***

Neither Party shall be entitled to rely upon the provisions of Clause 13.1 above if-

- (i) both Parties determine that an Event of *Force Majeure* has not occurred;
- (ii) one Party does not agree that a particular event or occurrence which has occurred is an Event of *Force Majeure*.

If there is any dispute as to whether any particular event or occurrence is an Event of *Force Majeure* or not, the dispute shall be discussed by the Parties with a view for amicable settlement.

### **13.3 Delays and Interruption**

If an Event of *Force Majeure* occurs by reason of which one Party is unable to perform its obligation under this Agreement, the affected Party shall inform the other Party as soon as reasonably practicable thereafter of the occurrence of that Event of *Force Majeure* and shall use all reasonable endeavours to mitigate any delay or interruption to the performance of this Agreement.

### **13.4 Termination**

If the Government or APCO is unable to perform any of its obligations under this Agreement as a result of the continuing occurrence of an Event of *Force Majeure* for a continuous period of more than three (3) months and such Event of *Force Majeure* is of such severity so as to frustrate the intention of this Agreement, either Party may, by a written notice, to the other Party terminate this Agreement in accordance with the terms and conditions set forth herein.

### **13.5 Effect of Termination**

If this Agreement is terminated by an Event of *Force Majeure* pursuant to Clause 13.4 above, all rights and obligations of the Parties under the Agreement shall forthwith terminate and neither Party shall have any claim against the other Party and neither Party shall be liable to each other save for any rights and liabilities accruing prior to the occurrence of the Event of *Force Majeure*.

#### **13.6 Continuing Obligations**

Notwithstanding any provisions of this Clause, the Parties shall continue to perform those parts of the obligations not affected, delayed or interrupted by an Event of *Force Majeure* and such obligations shall, pending the outcome of the Event of *Force Majeure* continue in full force and effect.

### **CLAUSE 14** **ARBITRATION**

#### **14.1 Submission**

If any matter, dispute or claim cannot be settled amicably between the Parties, the matter, dispute or claim may be referred by either Party to an arbitrator to be agreed between the Parties, or failing any agreement, to be nominated on the application of any Party by the Director General of the Kuala Lumpur Regional Centre for Arbitration and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2005.

#### **14.2 Venue and Rules**

The arbitration proceedings shall be held at the Kuala Lumpur Regional Centre for Arbitration using the arbitration rules of the Centre and utilising the facilities



and system available at the Centre or at such other venue within Malaysia as may be specified by the arbitrator and shall be conducted in English.

#### **14.3 Costs**

Each Party shall bear its own costs of the arbitration proceedings.

#### **14.4 Decision and Award Binding and Enforceable**

The decision and award of the arbitrator shall be final, binding and enforceable on Parties hereto.

### **CLAUSE 15**

#### **MISCELLANEOUS**

#### **15.1 Confidentiality**

##### **15.1.1 Confidentiality of Information**

All information (whether commercial, financial, technical or otherwise) relating to the Government designated as "confidential" by the Government, disclosed to or otherwise obtained by APCO under or in connection with this Agreement shall be considered as confidential information ("Confidential Information")., except as required to be disclosed under applicable Malaysian or U.S. law, including FARA.

##### **15.1.2 Non-Disclosure**

Except with the prior written consent of the Government and subject to Clause 15.1.3, APCO, its personnel, agents and their personnel shall not at any time -

- (a) communicate to any person or body or entity except those employees, agents and other suppliers on a need-to-know basis, any Confidential Information disclosed to it for the purpose of the Agreement or discovered by it in the course of the provision and performance of the Agreement;
- (b) except for the purpose of carrying out the Services, make public any information as to the recommendations, assessments and opinions formulated in the course of or as a result of the provision and performance of the Agreement; or
- (c) except for the purpose of carrying out the Services, make or cause to be made any press statement or otherwise relating to the Agreement nor publish or cause to be published any material whatsoever relating to the Agreement.

#### 15.1.3 Exceptions

The obligations in Clause 15.1.2 shall not apply to any Confidential Information which –

- (a) is in APCO's possession (with full right to disclose) before receiving it from the Government;
- (b) is or becomes public knowledge other than by breach of Clause 15.1.2;
- (c) is independent or developed by APCO without access to or with the use of the Confidential Information; or
- (d) is lawfully received from a third party (with full rights to disclose).

#### **15.1.4 Survival**

Clause 15.1 shall continue in force notwithstanding the termination of this Agreement for any reason.

#### **15.2 Assignment**

APCO shall not assign or transfer the benefits or obligations of this Agreement or any part without the prior written approval of the Government. To the extent that APCO is permitted to assign this Agreement, all provisions of this Agreement shall remain binding upon APCO unless agreed otherwise by the Parties.

#### **15.3 Waiver**

Failure by either Party to enforce at any time, any provision of this Agreement shall not be construed as a waiver of its right to enforce against the breach of such provision or any other provision in this Agreement or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this Agreement.

#### **15.4 Cost and Stamp Duty**

All costs incidental to the preparation and execution of this Agreement including the stamp duty, shall be borne and paid by APCO and each Party shall bear its own legal costs.

#### **15.5 Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of Malaysia.

#### **15.6 Severability**

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised as part of this Agreement and the remaining provision shall remain in full force and effect as if this Agreement had been entered into without the void, illegal and unenforceable provisions.

#### **15.7 Compliance with Law**

15.7.1 APCO shall comply with all the applicable laws and regulations in Malaysia.

15.7.2 APCO shall also comply with relevant policies, procedures and regulations of the Government at all times in the execution of its obligations under this Agreement.

#### **15.8 Notices**

15.8.1 Any notice, approval or request required or permitted to be given or made under this Agreement shall be in writing in the English language and delivered to the address or facsimile numbers as either Party may have notified the sender and shall unless otherwise provided herein be deemed to be duly given or made, in the case of delivery in person or by facsimile transmission, when delivered to the recipient at such address or facsimile number which is duly acknowledged -

**To the Government:**

Representative : The Prime Minister's Department  
Address : Finance and Development Division  
Prime Minister's Department,  
Level 2, Block B8,  
Federal Government Administrative Centre,  
62502 Putrajaya.

Telephone No. : 03-8888 4396

Fax No. : 03-8890 1460

**To APCO:**

Name of firm : **APCO Worldwide Inc.**  
Address : 700 12<sup>th</sup> Street, NW  
Suite 800  
Washington, D.C. 20005

Telephone No. : 202-778-1000

Fax No. : 202-778-1092

15.8.2 It shall be duty of the Parties to notify the other if there is a change of address or entity by giving a fourteen (14) day written notice.

**15.9 Time**

Time whenever mentioned shall be of essence in this Agreement.

#### **15.10 No Agency and No Partnership**

##### **15.10.1 No Agency**

APCO shall not hold itself out to be the principal or agent of the Government for any purpose and under no circumstances shall any action of APCO bind the Government.

##### **15.10.2 No Partnership**

Nothing contained in this Agreement shall be construed as creating or be deemed to imply a partnership between the Government and APCO.

#### **15.11 Amendment**

No variation or amendment of this Agreement shall have any legal effect and force unless such amendment is mutually agreed in writing by way of Supplementary Agreement specifically referring to this Agreement and signed by the duly authorized representatives of the Parties.

#### **15.12 Authorized Representative**

##### **15.12.1 Parties' Representative**

The Parties shall appoint their respective representative to carry out the Parties' respective obligations and exercise the respective rights under this Agreement.

##### **15.12.2 Authorized Representatives**

Any action required or permitted to be taken, and any documents required or permitted to be executed under this Agreement, may be taken or executed for and on behalf of the Government or APCO by the representative who has been appointed pursuant to clause 15.12.1.

**15.13 Entire Agreement**

This Agreement constitutes the entire agreement between the Government and APCO and supersedes and cancel all prior representation, negotiation, letter of acceptance, agreement, understanding or Agreement, whether verbal or written, between the Parties hereto or their agents, with respect to or in connection with any of the matters or things to which this Agreement refers.

**15.14 Successors In Title**

This Agreement shall be binding on the Parties' successors in title and permitted assigns.

**15.15 Precedence**

In the event of conflict between the provisions of this Agreement and any attached Schedules, the provisions of this Agreement shall to the extent of such conflict take precedence.

***-the space below has been intentionally left blank-***

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names by their duly authorized representatives the day and year first written above.

Signed for and on behalf of the  
**GOVERNMENT OF MALAYSIA**

Name :

I/C No.:

Designation :

)  
)  
) **ZOLKOPLI BIN DAHALAN**  
Setiausaha Bahagian  
Bahagian Kewangan dan  
Pembangunan  
Jabatan Perdana Menteri  
)  
)

In the presence of:

Name:

I/C No.:

Designation :

) **NOOR AZMAN BIN ABDUL RAHMAN**  
TSUB(K)  
) **BHG. KEWANGAN DAN PEMBANGUNAN**  
JABATAN PERDANA MENTERI  
)  
)

Signed for and on behalf of  
**APCO Worldwide Inc.**

Name :

Passport No.:

Designation :

) **ROBERT SCHROEDER**  
)  
) **PRESIDENT, AMERICAS**  
)



In the presence of:

Name :

Passport No.:

Designation :

) **GERARDO LAPEDONA**  
)  
) **SVP & ASSOCIATE GENERAL COUNSEL**  
)